IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1680 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
USHABEN WD/O MAHESHBHAI CHAVDA & ORS. - Respondent(s)

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Appearance :
Ms. Jyoti Mehta for Appellant.
Shri Shital R. Patel for Respondent Nos. 1 - 3.
None for Respondent No. 4 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/08/2007

ORAL JUDGMENT

The Gujarat State Road Transport Corporation ("GSRTC" for

short), being aggrieved by the award dated 9th October, 1989 passed by the learned Motor Accident Claims Tribunal (Main), Vadodara in M.A.C. Application No.754 of 1987, is before this Court with a submission that the learned Tribunal below erred in awarding Rs.25,000/- in excess of the entitlement of the claimants while awarding a sum of Rs.2,26,250/- as compensation.

2. As the GSRTC is not challenging the liability to pay the amount, it is not necessary for this Court to burden the judgement unnecessarily by detailing the facts regarding rashness, negligence, accident and liability of the driver and GSRTC.

3. Ms. Jyoti Mehta, learned Counsel for the appellant, submitted that the learned Tribunal erred in assessing the future income of the deceased at Rs.1,300/- per month in absence of any evidence, rather logical evidence, on the record. She also submitted that the multiplier of 18 (eighteen) was wrongly applied and in case of the parents of the deceased, who are admittedly 44 and 40 years on the date of the claim petition, the multiplier of 18 (eighteen) could not be applied. She submitted that the compensation amount deserves to be reduced at least by Rs.25,000/-.

4. Shri Shital R. Patel, learned Counsel for respondent Nos.1, 2

& 3, after taking me through the evidence of Ushaben - widow of the deceased Maheshbhai and other evidence available on the records, submitted that the deceased could be employed for Rs.2,000/- per month and as, on the date of the death, he was earning around Rs.1,000/- per month, the learned Tribunal was not unjustified in holding the future income to be Rs.1,300/- per month.

5. Ushaben – widow of deceased Maheshbhai had stated in her examination in chief that the deceased was staying in a hostel; he was taking tuitions and was earning a sum of Rs.800/- per month. She had also stated that after the deceased had undergone the training successfully, he could have been employed at Rs.1,500/- per month and very shortly, he could have earned a sum of Rs.2,000/- per month. She also stated that the deceased was helping his uncle in his agricultural operations and was also earning a sum of Rs.200/- per month.

6. In the cross examination, she stated that she did not know about the salary package of the person who was trained as a line-man. She also admitted that she did not know anything about the employment of such persons. If that was so, her statement in the examination in chief would assume no importance. However, from the statement of Mineshkumar, it would be clear that a person, after completing the training, would be employed for a sum of Rs.975/- per month only.

7. So far as the earnings from tuitions are concerned, the learned Tribunal below has not rightly believed the same because it has come in the examination of Ushaben that the deceased was in the Training Institute between 8:00 a.m. to 6:00 p.m. The learned Tribunal below was also justified in holding that if the deceased was working for 10 hours under the training programme, then, no time would be left for him to take tuitions. In the opinion of this Court, the learned Tribunal was again justified in holding that the deceased could not help and assist his uncle in his agricultural operations because the deceased was staying at Sherkhi and the uncle's land were in the different village. Under the circumstances, I hold that the learned Tribunal was justified in assessing the future income at Rs.1,300/- only.

8. The learned Tribunal below had deducted a sum of Rs.300/- only towards the personal expenses of the deceased and held that a sum of Rs.1,000/- would be available to the family. So far as that finding is concerned, in the opinion of this Court, the learned Tribunal below was unjustified in deducting a sum of Rs.300/- only, the learned Tribunal should have deducted a sum of Rs.400/- and should have further held that the dependency could be Rs.900/-. Out of the said amount of Rs.900/-, I will hold that the widow would be entitled to Rs.500/- per month or Rs.6,000/- per year. The learned Tribunal below was justified

in applying the multiplier of 18 (eighteen) in case of the young widow. The widow, therefore, would be entitled to a sum of Rs.1,08,000/- only. For the parents, I would hold that each of them would be entitled to a sum of Rs.200/- or Rs.400/- jointly per month or Rs.4,800/- per year. In case of compensation, it is not only the age of the deceased which is required to be taken into consideration, but, the age of the dependents is also required to be considered. In case of dependent brother, who is 17 years of age, he would be entitled to compensation for one year, but, in case of the minor son, who is only of 2 years, he would be entitled to the multiplier of 16. In case the parents are young and the person who died was also young, then, the higher multiplier would be available, but, in case where the parents are above 40 years, then, the multiplier of 18 (eighteen) would not be available. In case of the parents, in the opinion of this Court, the multiplier of 12 (twelve) would be reasonable. Consequently, the parents would be entitled to a sum of Rs.57,600/- under the head of loss of future income/dependency. The total amount to which respondent Nos.1, 2 and 3 would be entitled under the head of dependency would be Rs.1,65,600/-.

9. If I take the case as it is and hold that the dependency was Rs.1,000/- and out of the said amount I award Rs.500/- to the widow and the balance amount of Rs.500/- to the parents, then, the parents would be entitled to a sum of Rs.72,000/- only with the application of

the multiplier of 12 (twelve), and under the circumstances, the claimants would be jointly entitled to a sum of Rs.1,80,000/-. To either of the amounts, if I will add Rs.10,000/- towards loss of expectation of life and loss of company and Rs.250/-, which is awarded under the head of expenses in each of the cases, the amount would not reach to Rs.2,26,000/-. In each of the case, the amount would be less by Rs.30,000/- at least.

10. Under the circumstances and for the reasons aforesaid, I must hold that the claimants are not entitled to a sum of Rs.2,26,000/- under the head of loss of dependency and other claims.

11. The GSRTC has justifiably proved that at least an amount of Rs.25,000/- has been awarded in excess in favour of the claimants. The appeal to the extent indicated above deserves and is, accordingly, allowed. If the amount awarded in favour of the claimants has already been deposited with the Bank, as directed by the Court, then, on an application by the appellant – GSRTC, the amount of Rs.25,000/- with the interest accrued thereupon would be refunded in favour of the GSRTC. In case the entire amount has been withdrawn by the claimants, then, GSRTC would be entitled to refund of Rs.25,000/- with 6% yearly interest from the date of deposit till realisation from respondent Nos.1, 2 and 3, who would be jointly and severally liable to pay the said amount.

The appeal is allowed. No costs.

[R.S.Garg, J.]

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